

## **PUBLIC CONTRACTS REVIEW BOARD**

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### **Case 1389 – CFT 009-0626/19– Tender for the Supply of Haemo Dialysis Couches for the Renal Unit at Mater Dei Hospital**

#### **Remedy before Closing Date of a Call for Competition**

The publication date of the call for tenders was the 25<sup>th</sup> June 2019 whilst the closing date was the 15<sup>th</sup> July 2019 (extended to 29<sup>th</sup> July 2019). The estimated value of the tender (exclusive of VAT) was € 28,700.

On the 5<sup>th</sup> July 2019 Mr Russlan Cilia sought a Remedy against the Central Procurement and Supplies Unit as the Contracting Authority because h felt aggrieved by the tender specifications.

On 26<sup>th</sup> November 2019 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

#### **Appellant – Mr Russlan Cilia**

Not represented

#### **Contracting Authority – Central Procurement and Supplies Unit**

Dr Marco Woods	Legal Representative
Eng Chris Attard Montalto	Representative
Ms Alison Gatt	Representative

Dr Anthony Cassar, Chairman of the Public Contracts Review Board, welcomed the parties and prior to inviting submissions stated that he was given to understand that the Contracting Authority were considering altering some of the tender conditions which Mr Cilia felt aggrieved about.

Dr Marco Woods in conjunction with Engineer Chris Attard Montalto representing the Central Procurement and Supplies Unit advised the Board that the Contracting Authority were prepared to reduce the manufacturers’ track record of manufacturing the equipment to a period of ten years instead of the twenty years specified in the tender (section 5.1.8). The number of reference sites was to remain the same (section 5.1.9) whilst any reference to the spare parts (section 5.1.10) was to be removed. All these points to be covered in a clarification note.

The Chairman thanked the CPSU representatives for their co-operation and declared the hearing closed.

End of Minutes

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## **Decision**

**This Board,**

**having noted this ‘Call for Remedy Prior to the Closing Date of a Call for Competition’ filed by Mr Russlan Cilia (herein after referred to as the Appellant) on 5 July 2019, refers to the claims made by same Appellant with regard to the tender of reference CFT 009-0626/19 listed as case No. 1389 in the records of the Public Contracts Review Board.**

**Appearing for the Appellant: In Absentia**

**Appearing for the Contracting Authority: Dr Marco Woods**

**Whereby, the Appellant contends that:**

- a) Articles 5.1.8 to 5.1.10 and 5.1.11 to 5.1.14 of the technical specifications of the tender, breach the Anti-Competition directives and are highly subjective and can be easily abused.**

**This Board also noted the Contracting Authority’s ‘Letter of Reply’ dated 12 July 2019 wherein:**

a) **The Authority maintains that the clauses being contested by Appellant are necessary so as to ensure that the product being requested is of the highest proven standards. In this regard, the Authority takes also into consideration the safety and well-being of the patient.**

**After having deferred the hearing on this appeal on various occasions, due to the unavailability of Appellant, this Board takes into consideration the importance of this procurement, having its main objective the well-being of the patient, so that this hearing will be held whilst taking into account the Appellant’s submissions in his ‘Call for Remedy’ dated 3 July 2019 and the Authority’s submissions during the hearing.**

**1. Appellant’s concerns refer to the articles 5.1.8 to 5.1.10 and 5.1.11 to 5.1.14 of the technical specifications and in this regard, reference is being made to each article for due consideration.**

**2. With regard to article 5.1.8 which reads as follows:**

“

5.1.8	<i>The manufacturer is required to submit documented proof, that the firm has minimum track record of manufacturing the equipment outlined in this document for least 20 years</i>
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**This Board opines that, although the above clause is meant to secure products from manufacturers who have been well established in the industry, the period of twenty years is too restrictive and will affect substantially the participation of the other manufacturers who although not established twenty years ago, they do manufacture reliable and proven safe products, so that a period relating to the last ten years will be more justifiable and proportionate.**

**3. With regard to article 5.1.9, viz:**

“

5.1.9	<i>Moreover the manufacturer shall be required to submit minimum of 30 reference sites where models of their equipment have been installed in hospital sites in the European Union, only</i>
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**This Board has been made aware that the product being requested must be of the highest standard and has a proven track record that same product has been used in at least 30 hospitals in Europe. This Board also considers the fact that from information obtained, there are more than one thousand hospitals in Europe, so that the request for references from at least 30 hospitals in Europe is reasonable and proportional.**

**4. With regard to article 5.1.10 viz:**

“

5.1.10	<i>The Contracting Authority reserves the right to make contact with any reference site submitted. If a single reference site complains of numerous issues on the product of a particular, manufacturer then this will be used as a reason to. refuse the product of a particular supplier</i>
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**This Board opines that the Authority has the right and obligation, especially during the evaluation process to verify any or all references submitted by the bidders, so that this clause should stay.**

**5. With regard to article 5.1.11, viz:**

“

5.1.11	<i>All Tenderers shall be obliged to submit a <u>FULL</u> list of Spare, Parts complete with a unit cost of each item. Tenderers submitting just a recommended spare parts list (and NOT a complete list), will lead to the offer to be refused irrevocably.</i>
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**This Board does not identify any justifiable objective as to why such a requisite is being stipulated and apart from creating an unnecessary burden on the prospective bidder, it should be the responsibility of the manufacturer to be able to supply any spare part which might be**

requested. In this regard, this Board opines that this article should be deleted.

**6. With regard to article 5.1.12, viz:**

“

5.1.12	<i>This priced list of spare parts shall be submitted independently from the official Financial Bid of this Tend</i>
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**This Board opines that, as in 5.1.11, the above article should be deleted.**

**7. With regard to articles 5.1.13 and 5.1.14 which read as follows:**

“

5.1.13	<i>The spare parts will not be ordered, in the event of an award, however the total value of all the spare parts will indeed have a bearing on the overall tender value of each and every Tenderer's bid.</i>
5.1.14	<i>In the event of an award, although the spare part will not be ordered, The cost of each part will need to remain valid for a period of 10 years, from the date of the Contract.</i>

”

**This Board opines that the above two articles should be deleted and replaced by an article that reads as follows:**

*“Although spare parts will not be ordered with the award of the tender, the successful bidder must guarantee that the cost of any spare part relating to the product, must remain fixed for a period of 10 years from the date of contract.”*

**In conclusion, this Board opines that:**

**a) Article 5.1.8 is to be amended to read:**

*“The manufacturer is required to submit documented proof, that the firm has a minimum track record of manufacturing the equipment outlined in this document for the last 10 years.”*

**b) Article 5.1.9 is a reasonable and proportionate request and should remain as part of the technical specifications as stipulated.**

**c) Article 5.1.10 must remain; as such a stipulation is an obligation on the part of the Evaluation Board during the evaluation process.**

**d) Articles 5.1.11 and 5.1.12 also to be deleted.**

**e) Articles 5.1.13 and 5.1.14 should be deleted and replaced as duly recommended by this Board.**

**In view of the above, this Board,**

- i. directs the Authority to amend the technical specifications of the tender, with particular reference to articles 5.1.8 to 5.1.10 and 5.1.11 to 5.1.14, as duly recommended by this Board,**
- ii. such amendments to technical specifications are to be effected through a clarification note,**
- iii. directs the Authority to resume the tendering process,**
- iv. the closing date for submissions is being established to be 20 December 2019.**

Dr Anthony Cassar  
Chairman

Dr Charles Cassar  
Member

Mr Lawrence Ancilleri  
Member

*10 December 2019*